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Thomas Stinson

Mr. Justice Roland Ritchie:  
A Biography

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*The author reviews the judicial career of Mr. Justice Roland Ritchie and, in particular, his performance at the Supreme Court of Canada. Through a review of Ritchie's early life and an analysis of many of his decisions, the author argues that it would be inappropriate to label Mr. Justice Ritchie as a conservative. Rather, a more contextual analysis suggests a complex judicial persona: one in tune with the judicial norms of a pre-Charter era, but probably ill-suited to the needs of a post-Charter era.*

Mr. Justice Roland Almon Ritchie (1910–1988) was the most recent Nova Scotian to have been on the bench of the Supreme Court of Canada, serving for a quarter-century (1959–1984).<sup>1</sup> Judicial biographies in this country are rare enough<sup>2</sup> that any addition to the literature can be justified but Ritchie is an especially intriguing choice. He served on the bench for a long period, there is a wealth of information regarding his formative years courtesy of the published diaries of his older brother, Charles, and he is regarded as the embodiment of conservatism in a court that has frequently been described as conservative or “captive”.<sup>3</sup>

Roland Ritchie was born in Halifax, Nova Scotia on 19 June 1910. He was a fourth-generation lawyer, part of a Ritchie dynasty which included three judges of the Nova Scotia Supreme Court as well as Canada's second chief justice, Sir William Johnstone Ritchie.<sup>4</sup> His mother, Lilian

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1. There have only ever been four justices from Nova Scotia to serve on the court: William Alexander Henry (1875–1888), Robert Sedgewick (1893–1906), Edmund Newcombe (1924–1931), and Ritchie. Roland Ritchie's grand-uncle, Sir William Johnstone Ritchie (1875–1892, chief justice from 1879), though born in Annapolis Royal, moved to Saint John as a young man and practised exclusively in New Brunswick.

2. Only three Supreme Court judges have received book-length treatment: D.R. Williams, *Duff: A Life in the Law* (Vancouver: University of British Columbia Press, 1984), a biography of Sir Lyman Poore Duff, the longest-serving of all justices on the Supreme Court of Canada; G. Bale, *Chief Justice William Johnstone Ritchie: Responsible Government and Judicial Review* (Ottawa: Carleton University Press, 1991); and D. Gruending, *Emmett Hall: Establishment Radical* (Toronto: Macmillan, 1985). See also, R.P.H. Balcome, ed., *Supreme Court of Canada Decision-Making: The Benchmarks of Rand, Kerwin and Marland* (Toronto: Carswell, 1990).

3. I. Bushnell, *The Captive Court: A Study of the Supreme Court of Canada* (Kingston and Montreal: McGill-Queen's University Press, 1992); P. Weiler, *In the Last Resort: A Critical Study of the Supreme Court of Canada* (Toronto: Carswell, 1974).

4. The family connections are traced in M.C. Ritchie, “The Beginnings of a Canadian Family” (1937) 24 *Nova Scotia Historical Society Collections* 137, who lists 20 descendants of Thomas Ritchie (1777–1852) as admitted to the bar as of that date and two more then studying law.

Stewart, also had impeccable legal antecedents. Her father was a lawyer, her grandfather was Nova Scotia's last Master of the Rolls, and her uncle Charles Townshend was Chief Justice of Nova Scotia at the time of Roland's birth. Roland's father, William Bruce Almon Ritchie, Q.C. (1860–1917), spent a year at Harvard Law School before being called to the bar in 1882. At the request of Robert Borden, he helped form the Halifax firm of Borden, Ritchie, Parker and Chisholm in 1889. W.B.A. Ritchie thus participated in the significant reorganization of some Halifax law practices in the 1880s and 1890s, which saw the model of the two-man partnership surpassed by law "firms" which might contain from four to six men, sometimes with a distinction between profit-sharing "partners" and salaried "associates".<sup>5</sup> Although a number of Halifax lawyers, including Borden himself, became very active corporate investors and promoters as well as advisers at this time, W.B.A. Ritchie kept somewhat aloof from such activities. The Tory Anglican Ritchies formed a kind of *noblesse de robe*, in which too much association with "commerce" was perceived as inappropriate. Both W.B.A. Ritchie's sons would remain faithful to these familial traditions.

Much of our information regarding Roland Ritchie's youth comes from the published diaries of his older brother, the diplomat Charles Ritchie.<sup>6</sup> His childhood experiences were those of his class in the dying days of the Edwardian era. Supervised by governesses as a small child, he was sent away to boarding school at King's Collegiate in Windsor, Nova Scotia at age eight. Leisure activities occurred primarily within the extended Ritchie-Almon-Stewart clan. Roland and Charles would often play in the woods near their grand home, The Bower, on Tower Road in the largely undeveloped south end of Halifax, while some time each summer was spent with the family of a former domestic on a farm near Stewiacke, Nova Scotia.<sup>7</sup>

When Roland was just a year old, the family moved to Vancouver. The British Columbia bar was expanding exponentially in the early twentieth

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5. Information about Roland Ritchie's parents comes from the entry on William Bruce Almon Ritchie which Philip Girard has prepared for the forthcoming vol. XV of the *Dictionary of Canadian Biography*.

6. C. Ritchie, *The Siren Years: A Canadian Diplomat Abroad 1937–1945* (Toronto: Macmillan, 1977); *Diplomatic Passport: More Undiplomatic Diaries 1946–1962* (Toronto: Macmillan, 1981); *An Appetite for Life: The Education of a Young Diarist 1924–1927* (Toronto: Macmillan, 1977); *Storm Signals: More Undiplomatic Diaries 1962–1971* (Toronto: Macmillan, 1987).

7. The Bower was built by Sir Brenton Halliburton, Chief Justice of Nova Scotia 1833–1860, in the early nineteenth century. The summers in Stewiacke are described in the story "Billy Coster" in C. Ritchie, *My Grandfather's House: Scenes of Childhood and Youth* (Toronto: Macmillan, 1987).

century, and W.B.A. Ritchie was lured there by greater opportunities for professional advancement. Lilian Ritchie would return to Halifax with her sons to visit her elderly father for a month each winter. Of him, Charles Ritchie remarks that, although called to the bar, “[n]ever in the course of nearly a century had my grandfather done a day’s work. This, and his heavy drinking, may have accounted for his healthy old age”.<sup>8</sup> Mr. Stewart finally passed away at nearly one hundred years of age in 1918, when Roland was not quite eight. No doubt the enormous and gloomy house on Tower Road, with its ancient occupants, left as much an impression on Roland as it did on Charles.

The war brought a return to Halifax for the Ritchie family. Roland’s father volunteered for service overseas but was not allowed to go because of partial deafness. Through the offices of his friend Robert Borden, now Prime Minister, Ritchie senior was appointed chief recruiting officer for the Maritimes. The family thus returned to The Bower in 1915. When the position ended in 1917, Ritchie returned alone to Vancouver in the fall. His mastoiditis required surgery in December, but he did not recover and died on Christmas Day. Charles Ritchie described his father as “a barrister and a brilliantly effective one to whom the law, which he had in his bones from generations of lawyers and judges, was a devotion”, and the obituary tributes suggest that this was not mere filial piety.<sup>9</sup> They describe him as one of the best-known lawyers in Canada and a later observer called him “the best all-round man of his day”.<sup>10</sup>

Exclusive of the value of The Bower, the declared net value of Ritchie’s estate was some \$11,000. This was not a large sum with which to maintain the lifestyle which the Ritchie family had enjoyed when William was alive, and Charles Ritchie’s diaries are filled with accounts of his mother’s worries over money. The Bower was a severe drain on her funds, and one of her stratagems for economising involved renting out the house and spending time abroad, either with relatives or in lower-budget rented premises. Thus the family passed the winter of 1919–1920 in England and on the continent, where the boys learned French from a Russian emigrée in Lausanne. They subsequently spent a winter in Boston in a furnished apartment “at the wrong end of Commonwealth Avenue . . . [where they] were always falling over each other”.<sup>11</sup> In spite

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8. C. Ritchie, “My Grandfather’s House” in Ritchie, *ibid.* at 6.

9. Ritchie, *The Siren Years*, *supra* note 6 at 8. For obituary tributes, see *Daily Colonist* (Victoria, B.C.), *Halifax Herald*, *Morning Chronicle* (Halifax), *Vancouver Daily Sun*, all 27 December 1917.

10. See the reminiscences of Mr. Justice R.H. Graham regarding both W.B.A. Ritchie and his brother J.J. Ritchie, Public Archives of Nova Scotia, MG 100, vol. 213, no. 42.

11. Ritchie, *The Siren Years*, *supra* note 6 at 120.

of her somewhat straitened circumstances, Lilian Ritchie always ensured that Charles and Roland would receive what, to her, seemed the best possible education. Her strong personal influence on both her sons cannot be doubted. In his private life Roland Ritchie manifested his mother's penchant for wit and mimicry, while in his public demeanour he resembled his father, always somewhat dry, austere and formally correct.

For high school, Roland Ritchie attended Trinity College School in Port Hope, Ontario. His father had been sent to Upper Canada College for a year, but rebelled; Roland on the other hand seems to have flourished at Trinity. Before returning there for his last year of high school, young "Roley" spent the summer of 1925 in Halifax. Charles wrote in June of that year: "Roley has arrived back from boarding-school for the holidays. He has grown quite a lot and is in tearing spirits and full of jokes. It is nice having him here. We can say anything to each other and he catches on to everything even when it is not said."<sup>12</sup>

There is some information concerning Ritchie's activities as an undergraduate at King's where he began in 1926, but these were difficult, disorganized years for that university. Its buildings at Windsor, Nova Scotia had been destroyed by fire in 1920, and the college was temporarily resident in an old hotel at the foot of Coburg Road in Halifax, bordering on the Northwest Arm, awaiting the construction of its new permanent buildings adjacent to Dalhousie. These were not occupied until after Ritchie had graduated.

Roland Ritchie's years at King's College provide some clues to his future legal career. He was already manifesting the traditional family interest in the law. In 1928, he served as the Attorney General in the college's mock parliament<sup>13</sup> and the following year, he was Solicitor General.<sup>14</sup> He was also quite active in the Haliburton literary society at the college, and in debating. In dramatics he was described by the college yearbook as having "the real artistic touch of the born actor."<sup>15</sup>

His graduation notice demonstrates other aspects of the Ritchie character:

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12. Ritchie, *An Appetite for Life*, *supra* note 6 at 62.

13. (1929) 362 King's College Record 28. Ritchie's actions are described as follows: "Here the Attorney-General's fiery eloquence got the better of his intentions and those points of law which he had intended to elucidate for his honorable but unlearned opponents became lost in a blaze of oratory calculated to wither the Opposition ranks to the proverbial ashes."

14. (1930) 366 King's College Record 35. For both these model parliaments, Ritchie was a member of the "Social-Fundamentalist" party. The noted future historian, W. Stewart MacNutt, served as Prime Minister in the 1929 parliament.

15. (1930) 368 King's College Record 44.

He has taken a very active part in the life of the College, particularly its social aspects, and a more loyal King's man could not be found. He has a most engaging manner and, when he pays us a visit, observers in Commons Hall can always detect a more than usually boisterous atmosphere about the Senior table. . . . As a student, Rolly has hitherto been satisfied to get through with as little work as possible, but once let loose among the law-books we imagine that his versatile genius will bring him ample laurels.<sup>16</sup>

Roland Ritchie graduated from King's with his B. A. in 1930 and then went to Pembroke College, Oxford, following in his brother's footsteps. Given his lack of academic stardom at King's, Pembroke was probably a logical choice for Roland. It had been so for Charles, who described it as "a small but attractive college. Its great attraction for me is that it has no college entrance exam."<sup>17</sup> Yet the choice of Oxford demands some further explanation, since Roland's father, his uncle and four of their cousins had all attended Harvard Law School. The Ritchies had always been an anglophile family, but the anglophilia of the Halifax elite took on an intensely nostalgic tone in the 1920s and 1930s, as the region's economy contracted painfully after the War and during the Depression. Oxford seemed to offer, as much to Lilian Ritchie as to Roland, the illusion of a gilded haven insulated from the painful economic realities and class antagonisms which characterized the region in the postwar period.<sup>18</sup>

Roland graduated from Pembroke with another B.A. in 1932, this time in jurisprudence. He returned to Halifax and practised law with J. M. Stewart from 1934 to 1940, in the firm Stewart, Smith, MacKeen and Rogers,<sup>19</sup> on his way to becoming "one of Nova Scotia's leading legal practitioners."<sup>20</sup> It would appear that Ritchie articled for two years before being called to the bar. Articling procedures in Nova Scotia changed at this time. Pursuant to *The Barristers and Solicitors' Act* of 1923,<sup>21</sup> an articling clerk who had a prior university degree of bachelor of arts or bachelor of laws "shall serve under articles of clerkship with one or more

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16. *Ibid.*

17. Ritchie, *An Appetite for Life*, *supra* note 6 at 68.

18. Ian MacKay has explored the nostalgic conservatism of the Halifax elite in this period through the career of Helen Creighton (1899–1989), a contemporary of Roland Ritchie: "Helen Creighton and the Politics of Antimodernism", in G. Davies, ed., *Myth and Milieu: Atlantic Literature and Culture 1918–1939* (Fredericton: Acadiensis Press, 1993). Robert MacNeil reminisces about the anglophilia of the Halifax middle class in *Wordstruck: A Memoir* (New York: Viking, 1989).

19. A.E. Marble, *Nova Scotians At Home and Abroad: Biographical Sketches of over six hundred native born Nova Scotians* (Hantsport: Lancelot, 1977) at 347.

20. P.C. Newman, ed., *Debrett's Illustrated Guide to the Canadian Establishment* (Agincourt: Methuen, 1983) at 386.

21. R.S.N.S. 1923, c. 112.

practising solicitors . . . for the period of three years".<sup>22</sup> But on 17 May 1933, the House of Assembly amended this section.<sup>23</sup> The new regulations only required an articling period of nine months for those with a law degree.<sup>24</sup> The alternative was the traditional three-year period for a bachelor's degree holder, but those in science and commerce were now permitted.<sup>25</sup> It is unclear under which of these alternatives Ritchie would have fit as, technically, his Oxford degree was another B.A. However the new act specified that it was not to apply to anyone who enrolled as an articling clerk before 1 November 1933.<sup>26</sup> Thus, it would appear that Ritchie should have been governed by the old standard and that he managed to persuade the Barristers' Society to lessen what should have been a three-year articling period.

Upon his return to Halifax, Ritchie at first lived with his mother at 55 Inglis Street in Halifax.<sup>27</sup> In 1936, he married Mary Lippincott Wyld, and the 1937 Halifax City Directory shows them living at 237 Tower Road.<sup>29</sup> At the time of Ritchie's appointment to the Supreme Court bench, they were living at 190 Inglis, quite close to the widow Ritchie who by then was at 141 Inglis.<sup>30</sup> Roland and his wife had one daughter, Elizabeth, who was born early in the Second World War.

By 1940, lawyers in Halifax, like men and women everywhere at that time, were turning their attention to the war in Europe. On 19 May 1940, Charles Ritchie recorded that:

My brother Roley has cabled asking me to do my best to get him a commission in the British Army to get him over here quicker than he could with the Canadians. Why should he be hurled into that hell in France? Why can't he wait until his turn comes to come over with the Canadians? It is not *his* England. It would be more appropriate if I went, as I have always been so bloody English.<sup>31</sup>

Roland Ritchie did make it to England that year, arriving with the West Nova Scotia Regiment in 1940.<sup>32</sup> The next year he was with the 4th Light Antiaircraft Regiment of the Canadian army (100th Battery),<sup>33</sup> and was

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22. *Ibid.*, s. 12(a)(i).

23. *An Act to Amend Chapter 112, Revised Statutes, 1923, "The Barristers and Solicitors' Act"*, S.N.S. 1933, c. 36.

24. *Ibid.* s. 2(a)(i).

25. *Ibid.* s. 2(a)(ii).

26. *Ibid.* s. 3.

27. (1936) 68 Halifax and Dartmouth City Directory 248.

28. Marble, *Nova Scotians At Home and Abroad*, *supra* note 19 at 347.

29. (1937) 69 Halifax and Dartmouth City Directory 252.

30. (1959) 91 Halifax and Dartmouth City Directory 384.

31. Ritchie, *The Siren Years*, *supra* note 6 at 53.

32. *The Canadian Who's Who 1961-63* (Toronto: Trans-Canada Press, 1963) at 946.

33. *Halifax Herald* (9 May 1959).

stationed in Sussex in 1942.<sup>34</sup> Early in 1943 he was hospitalized there with jaundice.<sup>35</sup> During his stay in England, he was assistant judge advocate general with the Third Canadian Division (1941–1944).<sup>36</sup> By early 1944 his regiment was stationed in Bournemouth,<sup>37</sup> where they prepared for the crossing to Europe. The Ritchie brothers got together in early May<sup>38</sup> and Roland found enough time to telephone Charles on the eve of the Normandy invasion.<sup>39</sup> “Shortly after the invasion he was seriously injured in action in a motorcycle mishap in France,”<sup>40</sup> and he was discharged with the rank of captain.<sup>41</sup>

After convalescence in Europe, Ritchie returned to Halifax and to the legal community, though he now practised with another firm<sup>42</sup>, which became known as Daley, Black, Ritchie and Moreira. Arthur Moreira lists Roland Ritchie’s strengths as litigation, “with a top reputation as an advocate”, and insurance, especially subrogated claims. As well, Moreira describes him as an “expert in trusts and equity” and a “profound, scholarly lawyer.”<sup>43</sup> Ritchie lectured in law at Dalhousie University from 1947 to 1959<sup>44</sup>, teaching the required second-year course in insurance law. It was a two-credit course with two lectures a week for one term.<sup>45</sup>

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34. Charles Ritchie writes: “My brother Roley’s mess is a depressing place. They live in slum conditions—they have taken over an ugly, characterless country house in Sussex. The mess is beaver-boarded—I suppose to protect the panelling—not a picture on the walls, just dirty beaver-board. Three uncovered dirty old sofas, each adorned with the person of a pot-bellied, bored, senior Canadian officer in a recumbent position, with a glass of brassy whisky in hand. A few hard wooden chairs with younger and equally bored officers seated on them.” *The Siren Years*, *supra* note 6 at 136.

35. *Ibid.* at 157.

36. *Halifax Herald* (9 May 1959).

37. Charles Ritchie writes: “Just back from a week-end with Roley at Bournemouth where his regiment is stationed. He is a local legend in the regiment and he lives up to it. Dark, restless, warm-hearted, caustic and above all natural. He has captured the imagination of the men in his regiment by being more alive than any of them.” *The Siren Years*, *supra* note 6 at 162.

38. *Ibid.* at 166.

39. *Ibid.*

40. *Halifax Herald* (28 April 1965).

41. *Halifax Herald* (9 May 1959). Reflecting on his friends who had been wounded or killed, Charles Ritchie wrote on 10 July 1944: “Roley, wounded, perhaps not beyond cure. . . .” *The Siren Years*, *supra* note 6 at 175.

42. Donald McInnes was also apparently interested in having Ritchie come to his firm (now McInnes, Cooper and Robertson). Personal interview with Mr. Arthur R. Moreira, Q.C. 24 March 1992.

43. *Ibid.*

44. *Dalhousie University Calendar 1947–1948* and subsequent calendars to 1959–1960 all list him as lecturer. Newman, ed., *supra* note 20 lists Ritchie as having lectured at Dalhousie only in 1958–1959. This is clearly wrong.

45. The calendar description reads: “This class includes a study of the law governing marine, fire, life and automobile insurance.” *Dalhousie University Calendar 1947–1948* at 112. In the *Dalhousie University Calendar 1952–1953*, the course is listed as a three-credit one, but the next year it reverted to its regular two-credit format.



Ritchie's exit from Dalhousie Law School, though obviously caused by his appointment to the bench, was symptomatic of developments at the school at that time: "By . . . 1957 . . . the downtowners were receding into the background."<sup>46</sup>

Professional honours came to Ritchie in the 1950s. He was named King's Counsel in 1950, and in 1958, he served as vice-president of the Nova Scotia Barristers' Society and a Nova Scotia member on the council of the Canadian Bar Association.<sup>47</sup> He was also active in community service during these years as president of the Halifax branches of the Red Cross and the Boy Scouts Association.<sup>48</sup> As well, he served from 1952 to 1960 as one of the King's College representatives on the Dalhousie Board of Governors.<sup>49</sup>

The postwar period also saw Ritchie become more involved politically. Charles Ritchie had described the family tradition in his diary as a young man: "Of course, the family have always been Conservatives and so I am, though I don't know much about politics".<sup>50</sup> The Conservative Party had been in a moribund condition provincially and federally after Prime Minister Bennett's defeat in 1935, and was undergoing a difficult transformation during the war years. Ritchie was one of the rising young men recruited, "after much convincing", to attempt to rejuvenate the party's flagging fortunes in Nova Scotia.<sup>51</sup> Provincial party leader George Nowlan was pleased with Ritchie's contribution, saying he "stands exceptionally well in Halifax, is young but yet has the respect of the business community . . . some day we will hear a great deal more of him."<sup>52</sup> Yet Ritchie's initial foray into party organization was a dismal failure. He had agreed to take on the presidency of the Halifax Progressive Conservative Association to prepare the campaign for a federal by-election in the dual constituency of Halifax in July 1947. The Conservative candidate ran a distant third behind the Liberal and CCF nominees, and Ritchie resigned in a huff when his performance was criticized.<sup>53</sup>

Undaunted, Ritchie, Robert Stanfield and others "worked like mad" in George Nowlan's campaign for a federal seat in Digby-Annapolis-Kings

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46. J. Willis, *A History of Dalhousie Law School* (Toronto: University of Toronto Press, 1979) at 170.

47. Newman, ed., *supra* note 20.

48. *Halifax Herald* (9 May 1959).

49. This information is gathered from the list of the Board of Governors printed in each annual edition of the *Dalhousie University Calendar*.

50. Ritchie, *An Appetite for Life*, *supra* note 6 at 33.

51. M. Conrad, *George Nowlan: Maritime Conservative in National Politics* (Toronto: University of Toronto Press, 1986) at 79, 84.

52. *Ibid.* at 84.

53. *Ibid.*

in a 1948 by-election. This time their efforts were crowned with success. Nowlan won a large majority against all odds, enough to transport Conservatives all across Nova Scotia “into a state of ecstasy.”<sup>54</sup> The Annapolis Valley politician would become Minister of National Revenue and subsequently Minister of Finance in the Diefenbaker government of 1957–1963.

In April 1959 the indefatigable Ivan Rand reached the compulsory retirement age of 75 and reluctantly stepped down from the Supreme Court of Canada. Tradition dictated that his replacement would come from the Maritimes, probably from Nova Scotia since Rand had been from New Brunswick. Soon after Rand’s departure Roland Ritchie received a telephone call from George Nowlan who chatted to him about the weather for ten or fifteen minutes before asking “How would you like a change of scene?”<sup>55</sup>

Arthur Moreira describes Roland Ritchie as “a lifelong Conservative” and when asked whether he thought that this had anything to do with the appointment to the bench, replied “I would have been surprised if it had not.”<sup>56</sup> It was certainly not unusual for the government of Prime Minister Diefenbaker to make political appointments to the bench. William Angus writes:

After so many years in opposition, the new government obviously found itself with a large fund of party talent aspiring to judicial positions. In the main, appointments during its first three years of office met with little criticism despite almost exclusive partisan appointments. By early 1961, however, signs were beginning to show that the situation had deteriorated.<sup>57</sup>

The *Halifax Herald* front page article announcing Roland Ritchie’s appointment to the court proudly portrays him as “one of the best known practitioners in the bar of this province [who] has appeared before all of the courts of Nova Scotia and the Supreme Court of Canada on numerous

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54. *Ibid.* at 99.

55. Moreira interview, *supra* note 42. In relaying this anecdote, Moreira referred to Nowlan as the Attorney General. This, of course, is not true. Nowlan was the Minister of National Revenue at that time. It is entirely possible, though, as Nova Scotia’s representative in the federal cabinet and as someone who knew Ritchie personally, that Nowlan would make the telephone call on behalf of Davie Fulton, the Attorney General.

56. *Ibid.*

57. W.H. Angus, “Judicial Selection in Canada—The Historical Perspective” (1967) 1 *Can. Leg. Studies* 220 at 247. It is interesting to contrast this with what Davie Fulton had said when the Conservatives were still in opposition: “I am confident that when the Conservative party is elected to power it will appoint lawyers to the bench only on the basis of their legal qualifications and fitness for the position in question. Whatever be the political party in whose ranks such men are to be found, the principle to be followed must be to appoint the man most qualified.” (1952) 3 *Hansard* 2695.

occasions.”<sup>58</sup> This may be an example of favourite-son boosterism, as it is difficult to support this claim objectively. An examination of volumes 33 through 42 of the Maritime Provinces Reports (1953–1959) shows that while Roland Ritchie was certainly not unknown to appear at the bar of the Supreme Court of Nova Scotia, neither was he its most prominent litigator. During these six years, the Reports list him as appearing six times.<sup>59</sup> Other locally well-known litigators such as William Cox, David Chipman, Donald McInnes, Ian MacKeigan and Ritchie’s partner Arthur Moreira would all seem to have been more frequent litigants before the Nova Scotia Supreme Court. These six cases of Ritchie do not indicate a particular area of specialty: he acted in drunk driving and motor vehicle accident cases, on insurance matters, which is certainly not surprising, and in one case with respect to the *Testators Family Maintenance Act*.<sup>60</sup> A search of the volumes of the *Supreme Court Reports* for these same years (1953–1959) does not indicate any appearances of Ritchie before the country’s highest court, although not all the Court’s decisions were published at this time. Thus it would not appear that Roland Ritchie was a patently obvious choice for elevation directly from private practice to the Supreme Court. Indeed, Arthur Moreira, when asked about Ritchie’s appointment, stated that “it came as a shock.”<sup>61</sup>

Charles Ritchie, not surprisingly, felt differently, proudly writing in his diary that “in the afternoon I went to see my brother Roley’s swearing-in as a judge of the Supreme Court. Nothing has ever given me more deep satisfaction than his now being what his nature, ability, and heredity meant him to be.”<sup>62</sup> Despite his brother’s belief that the universe was unfolding as it should, an objective analysis seems to indicate that there was no particular reason for Ritchie’s appointment. His suitability for the bench does not seem overwhelming.

In this respect, however, Roland Ritchie may have fit in with the court quite well. The Supreme Court of Canada in 1959 was not a particularly inspiring body, and one commentator feels that its quality declined further in the 1960s, Ritchie’s first decade on the bench.<sup>63</sup> There was a sizable turnover on the Supreme Court bench during the late 1950s. Rand,

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58. (9 May 1959).

59. *R. v. Meisner* (1955), 37 M.P.R. 330; *The Queen v. M.* (1956), 39 M.P.R. 142; *Minas Transport v. Phoenix Assurance* (1957), 39 M.P.R. 243; *Crowe v. Boyd* (1957), 39 M.P.R. 291; *In Re Cole Estate* (1958), 40 M.P.R. 201; and *R. v. Hiltz* (1958), 42 M.P.R. 1.

60. S.N.S. 1956, c. 8.

61. Moreira interview, *supra* note 42. A good deal of Moreira’s shock, though, came with the realization that he would now be responsible for maintaining the considerable litigation practice which Ritchie had built up at the firm.

62. Ritchie, *Diplomatic Passport*, *supra* note 6 at 158–159.

63. Weiler, *supra* note 3 at 116.

Locke, Kellock and Estey JJ. all departed.<sup>64</sup> New judges such as Ritchie and Ronald Martland gave the court a more conservative bent and prompted Paul Weiler to observe in the early 1970s “a general deterioration in craftsmanship in the last ten years.”<sup>65</sup> Weiler continues:

What is clearly apparent on the face of the reports is a sharp difference in reasoning style. In the sixties there are fewer opinions, they are shorter, they cite fewer legal authorities and draw them from a narrower range of sources, they deal with fewer legal issues and arguments and include much less analysis of the direction in which the law should grow.<sup>66</sup>

New arrivals such as Martland and Ritchie were black-letter advocates for whom *stare decisis* was all-important. Decisions did become shorter, as precedents would simply be stated with only rare attempts at justificatory analysis. This resulted in an overall policy of judicial restraint as is pointed out by other judicial commentators. Russell notes:

The Supreme Court of Canada has been relatively restrained in deciding cases concerning the division of powers. This self-restraint was particularly marked in the 1960s when the Court’s decisions, especially those relating to provincial initiatives in criminal law, added new fields for the exercise of concurrent powers under the B.N.A. Act.<sup>67</sup>

Similarly, Peter Hogg opines: “I cannot escape the conclusion that the Supreme Court of Canada, despite its abundant wisdom and commonsense, has not in the last 23 years made an important contribution to the development of a coherent body of Canadian administrative law.”<sup>68</sup>

The image that appears of the 1960s, and it will be tested later in this paper, is of a conservative and cautious Supreme Court in which Ritchie J. would seem to have been a decidedly typical, though not particularly notable, member. Its biggest change would come with the new decade, in 1970, when Bora Laskin was appointed as a *puisné* justice on the Supreme

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64. These four judges along with Abbott formed “the nucleus of the Court’s ‘liberal bloc’ in the 1950s.” P.H. Russell, *Leading Constitutional Decisions*, 4th ed. (Ottawa: Carleton University Press, 1987) at 354.

65. Weiler, *supra* note 3 at 116.

66. *Ibid.* at 227. Weiler’s comment regarding fewer judgments coming from the bench in a single case is supported: “In the 1950’s and early 1960’s the members of the court in a number of cases each wrote a separate judgment, often the same in substance and varying only in style or detail.” J.J. Robinette, “A Counsel Looks at the Court” (1975) 53 Can. Bar Rev. 558 at 559. It is interesting that this specific development would appear to be looked upon unfavourably by Weiler while Robinette seems to regard it as a welcome and logical improvement. With respect to the length of decisions, Mr. Justice Martland was certainly in favour of brevity, remarking caustically that the advent of the *Charter* in 1982, when he was retiring from the bench, “seemed to encourage voluminous judgments” from the Supreme Court justices. Personal telephone interview with the Hon. Ronald Martland, Q.C., 7 April 1992.

67. Russell, *supra* note 64 at 14–15.

68. P.W. Hogg, “The Supreme Court of Canada and Administrative Law, 1949–1971” (1973) 11 Osgoode Hall L. J. 187 at 223.

Court. His arrival jarred the complacent existence of the other members, especially when he was promoted to Chief Justice in 1973, ahead of far more senior judges, including Ritchie. As time passed, and Prime Minister Pierre Trudeau continued to appoint more liberal justices when vacancies occurred on the court, it would be reasonable to assume that Ritchie would become increasingly isolated on the conservative wing of the court.

To make a sweeping generalization and stamp Ritchie as being a conservative judge may not be supported by empirical data. Several studies of the Supreme Court's decisions in specific fields of law do not show Ritchie as being a hopelessly right wing justice. In 1967 S. R. Peck published an elaborate quantitative analysis of judicial votes, and concluded, with respect to income tax cases, that "the voting patterns of Taschereau C.J. and for Ritchie, Spence, Martland and Hall JJ. may be classified as neutral as between taxpayer and government."<sup>69</sup> Peck's survey found that Ritchie was similarly neutral with respect to negligence<sup>70</sup> and in criminal cases.<sup>71</sup> A study by Peter Hogg shows Ritchie as neutral in administrative law cases, splitting evenly between agency and complainant.<sup>72</sup> It should be noted, though, that both the Peck and Hogg studies occurred before the half-way point in Ritchie's quarter century term on the Supreme Court bench.

Nevertheless, one would suspect that the appointment of vibrant new liberal justices such as Brian Dickson in 1973 and Bertha Wilson in 1982 could not help but point out that Roland Ritchie was an example of an earlier generation of judges. One way to see if Roland Ritchie was being increasingly left behind is to consider whether he was more often in dissent as his time on the bench went on. To do this, one must read the judgments; an unavoidable, though lamented, task of a judicial biographer.<sup>73</sup>

I have divided Justice Ritchie's twenty-five year career on the Supreme Court into five periods of five years. I have examined the Supreme Court Reports for the first, third and last of these five year periods, and have listed how often Ritchie was in the majority or in dissent, how often he agreed with each other justice, and how often he actually wrote a judgment.

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69. S.R. Peck, "The Supreme Court of Canada, 1958-1966: A Search for Policy Through Scalogram Analysis" (1967) 45 Can. Bar Rev. 666 at 688.

70. *Ibid.* at 703.

71. *Ibid.* at 717.

72. Hogg, *supra* note 68 at 193.

73. "The thought of digesting all those judgements, however, is thoroughly unattractive." R. Gosse, "Random Thoughts of a Would-be Judicial Biographer" (1969) 19 U. T. L. J. 597 at 604.

Table I<sup>74</sup>

Number of reported decisions, 1960–1964:		
in which Ritchie J. participated:	270	
where he wrote a majority judgment:	65	24%
where he concurred in the majority:	192	61%
where he wrote a dissent:	10	4%
where he concurred in a dissent:	3	1%
Total of times in the majority	257	95%
Total of times in dissent	13	5%

Table II

Justice	# of times in agreement	# of decisions shared	percentage agreement
Kerwin	74	87	85%
Taschereau	137	154	89%
Locke	80	91	88%
Cartwright	153	174	88%
Fauteux	140	156	90%
Abbott	137	149	92%
Martland	193	200	97%
Judson	159	181	88%
Hall	49	53	92%
Spence	26	32	81%

Table III

Number of reported decisions, 1970–1974:		
in which Ritchie J. participated:	286	
where he wrote a majority judgment:	69	24%
where he concurred in the majority:	198	69%
where he wrote a dissent:	10	4%
where he concurred in a dissent:	9	3%
Total of times in the majority	267	93%
Total of times in dissent	19	7%

74. These totals include the one case listed in the 1959 Supreme Court Reports in which Ritchie participated, *Interprovincial Pipeline Co. v. Minister of National Revenue*, [1959] S.C.R. 763.

Table IV

Justice	# of times in agreement	# of decisions shared	percentage agreement
Cartwright	23	38	61%
Fauteux	103	112	92%
Abbott	133	143	93%
Martland	194	199	97%
Judson	183	202	91%
Hall	142	190	75%
Spence	174	230	76%
Pigeon	152	182	84%
Laskin	101	144	70%
Dickson	5	5	100%

Table V<sup>75</sup>

Number of reported decisions, 1980–1984:		
in which Ritchie J. participated:	362	
where he wrote a majority judgment:	46	13%
where he concurred in the majority:	291	80%
where he wrote a dissent:	11	3%
where he concurred in a dissent:	14	4%
Total of times in the majority	337	93%
Total of times in dissent	25	7%

Table VI

Justice	# of times in agreement	# of decisions shared	percentage agreement
Laskin	180	204	88%
Martland	185	198	93%
Spence	3	4	75%
Pigeon	50	59	85%
Dickson	279	306	91%
Beetz	229	252	91%
Estey	267	306	87%
Pratte	19	24	79%
McIntyre	267	299	89%
Chouinard	213	232	92%
Lamer	161	180	89%
Wilson	65	72	90%
LeDain	1	1	100%

75. There were twenty-three other decisions recorded in [1984] 2 S.C.R. and [1985] 1 S.C.R. which Ritchie J. heard but did not participate in the decision due to illness or retirement.

The statistics are quite revealing. The most obvious fact that they point out is the astonishing level of agreement that the judges were able to achieve among themselves, especially in the earlier and later periods. Any talk, then, of left-right cleavages on the court must be received with a good deal of suspicion, with the possible exception of the middle period (Table IV), which seems to reveal a minority 'liberal' bloc comprising Hall, Spence, Laskin and Cartwright. The statistics also show the ongoing level of agreement that Mr. Justice Ritchie enjoyed with almost all his fellow justices over the length of his tenure on the court. Thus any hypothesis that Ritchie was increasingly left isolated by a court that became ever more liberal cannot be proved quantitatively.

Indeed, it appears that Ritchie was more often in agreement with the rest of the court during the last period from 1980 to 1984 than from 1970 to 1974. A couple of factors may explain this. In the late 1960s and early 1970s, the court faced a sizable number of criminal law issues, and this was an issue on which the court was noticeably split. This accounts, in great part, for the relatively low agreement ratio between Ritchie and Chief Justice Cartwright. It was not that there was any specific disagreement between those two men; it was merely that Cartwright insisted on solid proof of criminal intention, otherwise he would not vote to convict.<sup>76</sup>

Ritchie's increasing ill health and age are also possible explanations for his generally high agreement ratios with the other justices between 1980 and 1984. During his last years on the court, Ritchie wrote a noticeably smaller percentage of decisions (16%) compared to the two earlier periods (28%). Perhaps after more than twenty years of hard work on the bench, it simply became easier for a tired judge to concur in the majority of someone else's decision. The figures for this category rise from 61% to 69% to 80% in the time periods studied. For the period 1964–1972, however, other research has shown that Ritchie heard the most cases (556) and wrote the third highest number of reasons, after Spence and Judson JJ.<sup>77</sup>

With respect to other specific judges, it is notable that, except for Chief Justice Cartwright, Ritchie disagreed most often with Laskin, especially in the 1970–1974 period. As well, the astonishingly high and consistent level of agreement enjoyed between Ritchie and his good friend, Mr.

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76. The split was especially notable between Cartwright and his successor as Chief Justice, Gérard Fauteux. See J.G. Snell and F. Vaughan, *The Supreme Court of Canada: History of the Institution* (Toronto: University of Toronto Press, 1985) at 208 and R.I. Cheffins, "The Supreme Court of Canada: The Quiet Court in an Unquiet Country" (1966) 4 Osgoode Hall L.J. 259 at 262.

77. Gruending, *supra* note 2 at 123.



Justice Ronald Martland, must be acknowledged.<sup>78</sup> Their backgrounds—both were from English or anglophile professional families, Conservative, Anglican, and Oxford-educated—were very similar. They even attended Oxford at the same time, although it is unclear whether they knew each other. Much of what Dawn Russell says of Ronald Martland’s ideas on judicial decision-making might also be said of Ritchie.<sup>79</sup> It is fitting that the two will be remembered in history for their joint dissent in the *Patriation Reference*<sup>80</sup>, which garnered some applause in the academic commentary on the case.<sup>81</sup>

In my opinion, the “highlights” of the career of Mr. Justice Roland Ritchie centre around his judgments concerning the Canadian Bill of Rights.<sup>82</sup> The brief biography of Justice Ritchie that is found in the *Canadian Encyclopedia*, for example, specifically mentions the Bill of Rights: “Ritchie is best known for a series of puzzling and somewhat conflicting decisions he wrote regarding the applicability of certain provisions of the Canadian Bill of Rights to the Indian Act, including the Drybones Case and the Lavell Case.”<sup>83</sup> As well, an article in the *Halifax Mail-Star* on the occasion of Ritchie’s death in 1988 states: “The highlight of Ritchie’s judicial career was his ruling in the Drybones case.”<sup>84</sup>

With hindsight, it is now possible in the 1990s to look back upon the Bill of Rights as merely a weak shadow of its lusty successor, the *Charter of Rights and Freedoms*, but the bill was passed with much fanfare by the Conservative government in 1960 as a result of the personal concern of Prime Minister John Diefenbaker with the subject. As it was not entrenched within the Constitution, but was just another statute, it was relatively easy for the Supreme Court, if it chose, to ignore it.

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78. Presumably Ritchie had something to do with the fact that in 1981, the University of King’s College, of which he was by then the Chancellor, awarded Martland an honorary doctorate of canon law. It was because of this long association between the two men, Martland and Ritchie, that I sought out Mr. Justice Martland for an interview in April 1992. At 87, he was counsel for Lang, Michener, Honeywell and Wotherspoon in Ottawa. He described Ritchie as “one of my closest friends” and said that it was “always a pleasure to be associated with him.” Martland interview, *supra* note 66. I am grateful to Mr. Martland’s daughter, Patricia Roscoe of Halifax, for her help in setting up this interview.

79. D. Russell, “Ronald Martland”, in Balcome *et al*, *supra* note 2 at 261–76, 395–404.

80. (1981), 125 D.L.R. (3d) 1 (S.C.C.).

81. J.N. Lyon, “Constitutional Theory and the Martland-Ritchie Dissent” (1981) 7 *Queen’s L. J.* 135.

82. S.C. 1960, c. 44.

83. *Canadian Encyclopedia*, vol. III, 2nd ed. (Edmonton: Hurtig, 1988) at 1874.

84. *The Mail-Star* (8 June 1988). Similarly, Ronald Martland describes it as Ritchie’s “lead case”. Martland interview, *supra* note 66.

The first case where the Bill was seriously considered by the Supreme Court was *Robertson and Rosetanni v. The Queen*.<sup>85</sup> The case involved a conviction for operating a bowling alley on a Sunday in contravention of the *Lord's Day Act*.<sup>86</sup> A bench of only five judges sat to hear the appeal. Ritchie, writing for a 4–1 majority, dismissed the appeal in a “basically conservative”<sup>87</sup> judgment, refusing to use the Bill of Rights to overturn the Sunday legislation. It was a “very timid and passive approach”<sup>88</sup> limiting the Bill’s ability to create new rights. The ruling meant that the Bill would only concern itself “with such rights and freedoms as they existed in Canada immediately before the Bill of Rights was enacted.”<sup>89</sup> Perhaps the most cutting criticism came from Ritchie’s future colleague Bora Laskin, then a professor at the University of Toronto. Laskin denied that the judgment contained any reasoning at all, stating that it contained mere assertions and conclusions.<sup>90</sup>

It was almost a decade after it was passed before the Bill of Rights achieved its first Supreme Court ‘success’. The case was *The Queen v. Drybones*<sup>91</sup>, one of the most famous pre-Charter decisions of the Supreme Court, which “contained all the elements destined to capture the attention of the Canadian public.”<sup>92</sup> Joe Drybones was an Indian who was found passed out and drunk in a Yellowknife hotel lobby on the night of 8 April 1967. He was charged and convicted of being “intoxicated off a reserve” contrary to s. 94(b) of the *Indian Act*.<sup>93</sup> The section contained a provision for a minimum fine and a maximum term of imprisonment of three months. In contrast, the *Liquor Ordinance Act* generally applicable throughout the Northwest Territories<sup>94</sup> contained no minimum fine and a maximum jail term of thirty days. Clearly there was one law for Indians

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85. [1963] S.C.R. 651.

86. R.S.C. 1952, c. 171.

87. Russell, *supra* note 64 at 396.

88. Weiler, *supra* note 3 at 195. Walter Tarnopolsky also criticizes the judgment: “One could take issue with Mr. Justice Ritchie even on his own terms. Although he suggested looking at the effect, not the purpose, of the legislation, the Supreme Court does not do so except, it seems, in the light of the views of the members of the Supreme Court. It does not, for example request or receive evidence as to the effect of the *Lord's Day Act*, as would the United States Supreme Court.” W.S. Tarnopolsky, *The Canadian Bill of Rights*, 2nd ed. (Toronto: McClelland and Stewart, 1975), at 135.

89. Snell and Vaughan, *supra* note 76 at 219.

90. B. Laskin, “Case Comment” (1964) 42 Can. Bar Rev. 147. See also Bushnell, *supra* note 3 at 352–355.

91. [1970] S.C.R. 282.

92. Snell and Vaughan, *supra* note 76 at 219.

93. R.S.C. 1952, c. 149.

94. R.O.N.W.T. 1957, c. 60, s. 19(1).

and another law for everyone else,<sup>95</sup> and this allowed Drybones to challenge his conviction on the grounds that he was denied his right to “equality before the law”<sup>96</sup> under the Bill of Rights “without discrimination by reason of race.”<sup>97</sup>

The majority decision, again written by Mr. Justice Ritchie, produced a major alteration in Bill of Rights analysis: “If Canadian civil libertarians were dismayed by the Court’s decision in *Robertson and Rosetanni* they found new grounds for hope in the Court’s next major decision on the Bill of Rights.”<sup>98</sup> Ritchie removed the most conservative aspect of the *Robertson and Rosetanni* ruling, and allowed in *Drybones* that the Bill of Rights could expand rights and freedoms beyond those that existed at its coming into force.

One commentator stated that it was “a landmark in the development of Canadian jurisprudence”<sup>99</sup> that signalled “the beginning of a new and difficult role for the Supreme Court of Canada.”<sup>100</sup> Paul Weiler declared that it was “a legal decision which will reverberate in Canadian law for decades, perhaps even centuries.”<sup>101</sup> Paul Cavalluzzo, perhaps tiring of such hyperbole, drily commented that “the *Drybones* decision is neither an agent of apocalypse nor a vehicle to utopia.”<sup>102</sup> And Cameron Smith, writing in the *Globe Magazine* stated that “the judgment read like a stock quotation . . . technical, dry and barren of philosophic reasoning.”<sup>103</sup>

Nevertheless, the judgment was hailed by most newspapers and human rights activists across the country, though it only made page 6 of the *Halifax Chronicle-Herald*.<sup>104</sup> In retrospect, it is now easy to see that

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95. Paul Weiler notes, though, that “one must feel some unease at relying on this factor; Drybones did receive the minimum fine of \$10.00 and it is hard to believe a white man would have received less than that under the Ordinance.

Hence any discriminatory inequality in the two laws produced at best a trivial injustice in Drybones’ own situation.” Weiler, *supra* note 3 at 196–197.

96. *Canadian Bill of Rights*, S.C. 1960, c. 44, s.1(b).

97. *Ibid.*

98. Russell, *supra* note 64 at 407. Arthur Moreira states that Ritchie’s decision in *Drybones* “brought radical thinking around to this side.” Moreira interview *supra* note 42. J.N. Lyon wrote that “in *Regina v. Drybones*, the Supreme Court of Canada has reversed its earlier decision in *Robertson and Rosetanni v. The Queen*, and it would have been better for our human rights jurisprudence, indeed for Canadian public law generally, had the majority judges openly admitted that this was the case.” J.N. Lyon, “*Drybones* and *Stare Decisis*” (1971) 17 McGill L. J. 594 at 594.

99. J.C. Smith, “*Regina v. Drybones* and Equality Before the Law” (1971) 49 Can. Bar Rev. 163 at 163.

100. *Ibid.* at 187.

101. Weiler, *supra* note 3 at 196.

102. P. Cavalluzzo, “Judicial Review and the Bill of Rights: *Drybones* and its Aftermath” (1971) 9 Osgoode Hall L.J. 511.

103. C. Smith, “The Highest Court” in *The Globe Magazine*, vol., (1970) 14 March 1970.

104. *Halifax Chronicle-Herald* (21 November 1969).

much of the enthusiasm was excessive, and that to interpret the decision as “the harbinger of greater things to come”<sup>105</sup> was simply incorrect. But by a close examination of the decisions rendered in *Drybones*, it is possible to see that “the Court was just as deeply divided as ever over the nature of the new judicial activism.”<sup>106</sup> This can be seen both by the stunning reversal of Chief Justice Cartwright, who switched from a basically pro-Bill of Rights dissent in *Robertson and Rosetanni* to an anti-Bill of Rights dissent in *Drybones*<sup>107</sup> and in the fact that Ritchie, writing the majority in both cases, also switched his basic and fundamental opinion regarding the effect of the Bill of Rights.

The confusion of Ritchie and much of the court is manifested even more clearly when considering the next major Bill of Rights case, *Attorney General of Canada v. Lavell and Bédard*.<sup>108</sup> It marked a return to the consideration of the relationship between the *Indian Act*<sup>109</sup> and the Bill of Rights. It examined the provision<sup>110</sup> that denied Indian women status when they married non-Indian men. Indian men did not suffer this same deprivation. The Supreme Court, with Ritchie again writing for the majority, “did considerably water down the significance of the right to equality before the law.”<sup>111</sup> In a result opposite to *Drybones*, the *Indian Act* provision was upheld and the Bill of Rights was held not to apply. As Russell explains, Ritchie now defined equality before the law not as a substantive requirement of the law itself, but merely as an administrative requirement. The *Indian Act* could discriminate against women as long as it was applied equally to all whom it affected.<sup>112</sup>

Paul Weiler wrote: “I would have thought it difficult to write an opinion which distinguished this case from *Drybones*; Mr. Justice Ritchie found this no more onerous a task than his earlier treatment of his effort in *Robertson & Rosetanni*.”<sup>113</sup> Peter Russell is equally brutal in his assessment of Ritchie’s decision:

Just as it is difficult to reconcile his opinion in *Drybones* with the position he had taken earlier in *Robertson and Rosetanni*, it is a daunting task to

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105. Snell and Vaughan, *supra* note 76 at 220.

106. *Ibid.*

107. “In the most astonishing and most open reversal in the history of the Supreme Court, [and] after having thought about the implications of his *Robertson and Rosetanni* judgement, Cartwright drew back in horror.” *Ibid.*

108. [1974] S.C.R. 1349.

109. R.S.C. 1970, c. I-6.

110. *Indian Act*, R.S.C. 1970, c. I-6, s. 12(1)(b).

111. Russell, *supra* note 64 at 421.

112. *Ibid.* at 421.

113. Weiler, *supra* note 3 at 224.

trace a thread of consistency between his approach to equality before the law in *Lavell* and his treatment of that concept in *Drybones*.<sup>114</sup>

Paul Weiler quotes the *Globe and Mail* as saying: “What the Supreme Court has done is throw us back to the sterile, jesuitical hair-splitting of a decade ago. What a pity.”<sup>115</sup>

Walter Tarnopolsky also criticized the *Lavell* result:

The problem is [sic] discussing the *Lavell* case is that so great a part of the judgments of the majority is devoted to setting up shibboleths and then elaborately and repeatedly striking them down. Excessively broad declarations are made, sometimes far beyond the requirements of the case, and then dismissed or reinterpreted without concise and sufficiently detailed analysis.<sup>116</sup>

It was left to Ritchie’s former colleague, Emmett Hall, to pronounce the most devastating criticism of *Lavell*:

On equality before the law the majority opinion was ‘just plain damn nonsense’, he wrote to his friend Thomas Berger. Furthermore, he could not ‘help but think of my erstwhile colleague Ritchie as coming within that qualification of those mammals who destroy and devour their young.’<sup>117</sup>

Apart from these well-known cases regarding the Bill of Rights, Mr. Justice Ritchie did not develop a specialty or a notable level of expertise in any one judicial area. This is not particularly unusual, though certain fields of law come to mind when considering specific justices. For example, Chief Justices Cartwright and Fauteux were criminal specialists, Justice Judson often wrote administrative decisions, and Justice Martland from Alberta played a leading role in oil and gas cases.<sup>118</sup> No particular field automatically springs to mind when considering Mr. Justice Ritchie, though when specifically asked about it, Mr. Justice Martland said that “maritime cases” such as “ship collisions” and “insurance law” were Ritchie’s two areas of expertise.<sup>119</sup>

What does come to mind, with the notable exception of the *Drybones* ruling, is Ritchie’s strong tendency always to apply a precedent. This general aversion to activism can be seen when examining the case of *The Queen v. Ancio*.<sup>120</sup> It is not a particularly notable case, but it was the occasion for Mr. Justice Ritchie’s last written dissent. It consisted of only

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114. Russell, *supra* note 64 at 421.

115. Weiler, *supra* note 3 at 224.

116. Tarnopolsky, *supra* note 88 at 149–150.

117. Quoted in Gruending, *supra* note 2 at 167.

118. These specialties, though self-evident to any observer of the Supreme Court, are noted in Weiler, *supra* note 3 at 24.

119. Martland interview, *supra* note 66.

120. [1984] 1 S.C.R. 225.

one sentence, but it is a fitting symbol of his overwhelming concern for and deference to legal precedent. He wrote simply that “I am unable to distinguish this case from that of *Lavoie v. The Queen*, [1974] S.C.R. 399, which is a unanimous judgment of this Court and by which I feel bound.”<sup>121</sup>

This is symptomatic of the major criticism that a legal observer in the 1990s has concerning the jurisprudence of Mr. Justice Ritchie. There is a sense of an overwhelming hesitance, an unwillingness to push or to dig deep, a reluctance to think seriously about what the law should be. The law is to be read, the precedents are to be found, and they are to be followed. Referring to Ritchie, Arthur Moreira states: “He was apt to be regarded by the young turks as a conservative, who was very archaic in his thinking.”<sup>122</sup>

Now to criticize Mr. Justice Ritchie for these habits and beliefs is, most definitely, to transfer the values of the 1990s back onto an earlier generation of judges. This is inherently unfair to Ritchie, and it must be acknowledged openly. Nevertheless, a policy of almost complete deference to *stare decisis*, with respect to the Bill of Rights for example, can certainly be criticized:

The Canadian Bill of Rights was enacted by Parliament for an important purpose, and for lawyers and judges to decline to accept the responsibility because the Bill is not sufficiently technical to suit their taste is to thwart the will of Parliament. The irony is that many who take this view claim to be observing the doctrine of parliamentary supremacy.<sup>123</sup>

Parliamentary supremacy was to be strongly curtailed with the passage of the new *Constitution Act, 1982* with its entrenched *Charter of Rights and Freedoms*, especially with the coming into force of the equality provisions in April 1985. Justice Ritchie was set to retire from the bench in June 1985, upon his seventy-fifth birthday, but he announced his departure several months early. His retirement occurred on 1 November 1984, opening the way for the appointment of New Brunswick judge Gérard La Forest, the first nominee of the new Conservative government of Prime Minister Brian Mulroney. Ritchie’s health had been fading for some time.<sup>124</sup>

It was perhaps just as well that Ritchie retired early, as it is difficult to perceive Ritchie and the *Charter* coexisting happily.<sup>125</sup> The *Charter* has

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121. *Ibid.* at 227.

122. Moreira interview, *supra* note 42.

123. Lyon, *supra* note 98 at 597.

124. “He was not well towards the end of his career on the bench.” Ronald Martland, referring to Roland Ritchie. Martland interview, *supra* note 66.

125. Ritchie heard very few *Charter* appeals, and participated in the judgments of even fewer. *Westendorp v. The Queen*, [1983] 1 S.C.R. 43; *Law Society of Upper Canada v. Skapinker*,

been the catalyst for a tremendous surge in judicial activism at the Supreme Court of Canada, led by Madam Justice Wilson and Chief Justices Brian Dickson and Antonio Lamer. A judge with Ritchie's traits of conservatism and deference to authority and Parliamentary supremacy would, most likely, have been extremely uncomfortable having to grapple with the *Charter*.<sup>126</sup> Arthur Moreira, however, qualifies this conclusion by stating that Ritchie was "not afraid of applying new sweeping legislation."<sup>127</sup> It was simply up to Parliament, in Ritchie's opinion, to act first.

Upon the occasion of Ritchie's retirement, Attorney General John Crosbie said that he "fulfilled his duties on Canada's highest court with fairness and compassion, and has made a significant contribution to the Canadian justice system"<sup>128</sup> and Ronald Martland described Ritchie as one of the Supreme Court's "hardest working members."<sup>129</sup> This was acknowledged within a few months of his retirement, when he was named a Companion of the Order of Canada. As well, he had been named an honorary fellow of Pembroke College, his English alma mater. Honorary degrees had been granted to him by King's College (a.D.C.L. in 1960) and by Dalhousie University where he had taught (an LL.D. in 1965).<sup>130</sup>

Another honour that had been bestowed upon Roland Ritchie was as a result of his continuing association with his alma mater, King's College in Halifax. In 1974, while still on the bench, he was selected by the university as its chancellor, and he officially continued in this position until a few months before his death in 1988. In May 1974 the Anglican

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[1984] 1 S.C.R. 357; *Attorney General of Québec v. Québec Protestant School Boards*, [1984] 2 S.C.R. 66; and *Hunter v. Southam*, [1984] 2 S.C.R. 145 were all unanimous decisions of the court in which Ritchie concurred. Though he heard the appeals of *Singh v. Minister of Employment and Immigration*, [1985] 1 S.C.R. 178; *R. v. Big M Drug Mart*, [1985] 1 S.C.R. 295; *Operation Dismantle v. R.*, [1985] 1 S.C.R. 441; and *R. v. Therens*, [1985] 1 S.C.R. 613, as well as several others, all these decisions were handed down by the Supreme Court with notations that Ritchie J. did not participate.

126. Given their good friendship and like-minded thinking, some of Ronald Martland's thoughts with respect to the *Charter* would perhaps have been shared by Ritchie. Martland, referring to the "very loose words of the Charter" states that it requires "creative work" on the part of judges, resulting in rulings "not so much associated with law as with sociology." Martland interview, *supra* note 66.

127. Moreira interview, *supra* note 42.

128. Quoted in Ritchie's obituary, *Halifax Mail-Star* (8 June 1988). It is the custom at the Supreme Court that the Attorney General appear in person to read a tribute to a retiring justice. Barbara Amiel recounts how, on 21 December 1978, then-Attorney General Marc Lalonde lauded Mr. Justice Wishart Spence while firmly looking at and addressing his remarks to Roland Ritchie throughout the ceremony. Barbara Amiel, "Nine Men In Search of Even-Handed Justice" (12 February 1979) 92:7 *Maclean's* 37 at 38.

129. Martland interview, *supra* note 66.

130. *The [Halifax] Chronicle-Herald* (28 April 1965).

Archbishop of Nova Scotia, William W. Davis, installed him in the position.<sup>131</sup> As university chancellorships go, that of King's was then an extremely light burden. In the early 1970s the divinity faculty at King's departed, as it had merged with the local Roman Catholic seminary and Pine Hill United Church divinity school in Halifax to form the Atlantic School of Theology. The only other King's students, those in Arts and Science, actually received their degrees from Dalhousie University. Thus the traditional role of a university chancellor, the granting of degrees, was nonexistent during much of Ritchie's tenure. It was not until a small Journalism school was set up at King's in the late 1970s that there would once again be "real" King's graduates. It would thus appear that Ritchie was present for convocation, or encaenia, as King's insists on calling it, on fewer than half a dozen occasions during his more than thirteen years as chancellor. As well, Ritchie's ill health prevented him from travelling to Halifax after he retired from the bench, and the role of chancellor was often filled by the Bishop of Nova Scotia.

In retirement, Ritchie continued to live in Ottawa, as by then he was in relatively poor health. He was unable, in retirement, to devote time or effort to the many causes and interests which he had struggled to maintain during his busy decades on the court. He had served as a director of the International Grenfell Association, and was a member of the Royal Nova Scotia Yacht Squadron, the Halifax Club, the Rideau Club and the Royal Ottawa Golf and Country Club.<sup>132</sup> Many of his holidays had been spent back in his beloved Nova Scotia. The Ritchie brothers, Roland and his wife Mary (usually known as Bunny) and Charles with his wife and cousin Sylvia often vacationed together.<sup>133</sup> He passed away in Ottawa on 5 June 1988, five days short of his seventy-eighth birthday. His wife Bunny had predeceased him by a few years, leaving, as Ronald Martland stated, "an awful dent in his life."<sup>134</sup>

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131. (1974) 9:8 King's College Tidings 3. The picture on the cover of that issue of the magazine shows Ritchie with a patch over his left eye, possibly the result of cataract surgery.

132. Newman, ed., *supra* note 20 at 386.

133. Charles Ritchie reminisced in his diary about one typical holiday that the four spent together in Nova Scotia: "We have escaped from Washington for a couple of weeks to come down here with Roley and Bunny and to see my mother. . . . Roley is lying asleep in a deck-chair on the damp lawn, looking like Sylvia's sketch of himself. Sylvia and Bunny are making cucumber sandwiches because the Misses Odell are coming to tea. They are Cranfordian, genteel spinsters, unpopularity invited by me. My mother has taken to her bed, totally exhausted by her family. My niece Eliza has simply gone off the air. A dull Sunday afternoon, but not repulsive. As a family we are happy together, glad to be together, enjoying each's other company more than that of other people." Ritchie, *Storm Signals*, *supra* note 6 at 17-18.

134. Martland interview, *supra* note 66. Mrs. Ritchie died on 28 February 1978. See obituary in *The Mail-Star* (2 March 1978).



The obituaries, not surprisingly, were deferential and kind.<sup>135</sup> *The [Toronto] Globe and Mail*, attempting to place Mr. Justice Ritchie on an ideological spectrum, stated that he “fell somewhere between the conservative and liberal camps of the Supreme Court.” It fell prey to an unusual bout of hyperbole in remarking that he “showed promise of following in the steps of his great uncle, Sir William Johnstone Ritchie, chief justice between 1879 and 1892.”<sup>136</sup> Perhaps the most revealing comments with respect to Roland Ritchie were made by Arthur Moreira, his law partner between 1951 and 1959.<sup>137</sup> The Halifax lawyer described Mr. Justice Ritchie as a “convivial, social, friendly, amusing” person. Mr. Moreira said about Ritchie:

He was an intellectual judge. He was not an innovative judge. He was a judge who knew the law very well and applied it. He didn't believe in judges reforming the law. He believed in judicial reform, but he thought it was a matter for Parliament. . . . If you want to use American terms, Ritchie was the last of the conservative judges and the bench is largely, if not exclusively composed of liberal-minded judges some of whom have sat there for quite a while. . . . It certainly is the end of an era. He is the last, I would say, of a series of pretty eminent Canadian judges who applied the law as they found it.<sup>138</sup>

The funeral was held Wednesday 8 June 1988, from St Bartholomew's Anglican Church in Ottawa.

It is difficult to sum up the career of Mr. Justice Ritchie. There must be something definitive, one would think, to say about anyone who spent a quarter of a century on the bench of this country's highest court. The statistics show, however, that Ritchie was not a particularly notable member of the bench. In contrast to Chief Justices Cartwright and Laskin, Ritchie was rarely a lonely or eloquent dissenter. He was a political appointment and a black letter judge in an era when neither of those things was unusual. He was only unusual in his longevity. By the time he left the bench in 1984, he was one of the few remaining examples of a judge who almost inherently deferred to *stare decisis* and legislative authority. As well, since Canadian jurisprudence has been “all changed, changed utterly”<sup>139</sup> since the advent of the *Charter*, any legacy that could have

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135. *The Mail-Star* (8 June 1988).

136. D. Downey, “Ex-Supreme Court justice known for Rights Bill Ruling” *The [Toronto] Globe and Mail* (7 June 1988) D7.

137. This aspect of Moreira's personality was confirmed during his refreshing and candid interview, *supra* note 42. I would very much like to thank him for his kindness and cooperation. As well, Marjorie Hickey of Daley, Black and Moreira was helpful in setting up the interview.

138. *The [Toronto] Globe and Mail* (6 June 1988).

139. William Butler Yeats, “Easter 1916”, in Alexander W. Allison, *et al*, *The Norton Anthology of Poetry*, revised, (New York: W.W. Norton & Co., 1975) 920.

been left by Ritchie has been overwhelmed by the importance and the quantity of Supreme Court decisions in the mid-to-late 1980s and early 1990s. Even his most notable rulings concerning the Bill of Rights have been made almost completely obsolete by the relative decline of the use of that statute now that the *Charter* is in existence. But as one of the last members of a notable Nova Scotia dynasty and, most likely, as the last Nova Scotian to serve on the bench of the Supreme Court of Canada this century,<sup>140</sup> he is certainly worthy of modest legal and historical study.

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140. Mr. Justice Gérard La Forest, currently the only Maritimer on the bench, is not required to retire until April 2001. At that point, or even if he retires before then, there is likely to be strong pressure on the Prime Minister of the day to appoint a Newfoundlander to the Supreme Court, as there has yet to be a member of the Court from that province.